The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DEAN ALAN SLAWSON
AND TJEERD HOEK

Appeal No. 2006-0332
Application No. 09/224,009

MAILED

APR 28 2006

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ON BRIEF

Before BARRETT, RUGGIERO, and BARRY, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the Examiner's rejection of claims 1-9, 11, 12, 14-32, 34, 35, and 37-44, which are all of the claims pending in this application. Claims 10, 13, 33, and 36 have been canceled.

The claimed invention relates to a method and system for searching media clip databases in which the media clip databases contain information including "find similar clips" indicia and

keywords. The "find similar clips" indicia, such as artistic style, color, and shape, include hidden criteria that identify and/or group media clips based on human judgement regarding the media clip content.

Representative claim 1 is reproduced as follows:

1. A method of searching a media clip database associated with a multimedia application program, wherein said media clip database contains information, including keywords and find similar clips indicia associated with media clips included in said media clip database, said find similar clips indicia including hidden criteria that identifies and/or groups media clips based on human judgment regarding the content of the media clip, said method comprising:

(a) in response to a user selecting a media clip, retrieving information, including find similar clips indicia and keywords, associated with said selected media clip from said media clip database;

(b) simultaneously presenting to the user for selection by the user:

(i) said keywords associated with said selected media clip; and

(ii) said find similar clip indicia associated with said selected media clip; and

(c) in response to the user creating search criteria by selecting one or more of said keywords and/or said find similar clips indicia associated with said selected media clip, retrieving all media clips in said media clip database that match the search criteria created by the user.

The Examiner relies on the following prior art:

Balogh et al. (Balogh)	5,493,677	Feb. 20, 1996
Cox et al. (Cox)	5,696,964	Dec. 09, 1997

Claims 1-9, 11, 12, 14-32, 34, 35, and 37-44, all of the appealed claims, stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Balogh in view of Cox.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs[1] and Answer for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner, the arguments in support of the rejection, and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

[1] The Appeal Brief was filed July 23, 2004. In response to the Examiner's Answer mailed April 11, 2005, a Reply Brief was filed June 15, 2005, which was acknowledged and entered by the Examiner as indicated in the communication mailed August 18, 2005.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the invention as set forth in claims 1-9, 11, 12, 14-32, 34, 35, and 37-44. Accordingly, we affirm.

Appellants' arguments in response to the Examiner's rejection of the appealed claims are organized according to a suggested grouping of claims indicated at page 14 of the Brief. We will consider the appealed claims separately only to the extent separate arguments for patentability are presented. Any dependent claim not separately argued will stand or fall with its base claim. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)].

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the

burden of going forward then shifts to Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

With respect to independent claim 1, the representative claim for Appellants' first suggested grouping (including claims 1-9, 11, 12, 14, and 15), Appellants' arguments in response to the Examiner's 35 U.S.C. § 103(a) rejection assert a failure to establish a prima facie case of obviousness since the Examiner has not established proper motivation for the proposed combination of references. Appellants further contend that, even if combined, all of the claimed limitations would not be taught or suggested by the combination of prior art references. After careful review of the disclosure of Balogh and Cox in light of the arguments of record, however, we are in general agreement with the Examiner's position as stated in the Answer.

Appellants initially assert (Brief, page 18; Reply Brief, pages 5-7) that, since Balogh and Cox are directed to contrasting techniques for retrieving images from a database, i.e., natural language querying (Balogh) versus iterative image selection (Cox), the ordinarily skilled artisan would not be led to combine them. We do not find this persuasive. As pointed out by the Examiner (Answer, pages 17 and 18), both Balogh and Cox are concerned with the retrieval of images from multimedia databases in which various criteria are assigned to the media objects. Further, while Balogh provides a natural language query technique for retrieving multimedia images, Cox (column 1, lines 42-47) recognizes the problem for some users who may not be able to skillfully formulate a textual query to access a desired image. As the Federal Circuit recently stated," ... this court has consistently stated that a court or examiner may find a motivation to combine prior art references in the nature of the problem to be solved." See Ruiz v. A.B. Chance, 357 F.3d 1270, 1274, 69 USPQ2d 1686, 1690 (Fed. Cir. 2004). See also Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996), citing In re Rinehart, 531 F.2d. 1048, 1054, 189 USPQ 143, 149 (CCPA 1976) (considering the problem to be solved in a determination of obviousness).

In our view, the collective teachings of Balogh and Cox would have suggested to one of ordinary skill that the iterative image search technique disclosed by Cox in which attributes which identify an image are hidden from the user would serve as an obvious enhancement to the system of Balogh. As further evidence that the reader of the Balogh disclosure would be led to the teachings of Cox is that Balogh suggests (column 1, lines 48-52) the desirability of providing user access to stored images utilizing "conceptual characteristics" of the images.

We also find to be unpersuasive Appellants' arguments in support of their position that, even if combined, the Balogh and Cox references do not disclose all that is claimed. According to Appellants (Brief, pages 18 and 19; Reply Brief, page 6), in contrast to their invention in which a user begins a search with selection of a media clip, Balogh begins a search based on words in a natural language query. We agree with the Examiner (Answer, page 17), however, that the language of claim 1 does not require that a search begin with selection of a media clip. As pointed out by the Examiner, Balogh, after a presentation of images based on an initial query (column 14, lines 40-60), provides for user selection of a media clip which can then be used for further searches utilizing drag and drop techniques.

Further, Appellants' arguments (Brief, page 13; Reply Brief, pages 2 and 3) do not convince us of any error in the Examiner's position which, in our view, reasonably interprets Balogh's descriptive labels, such as the captions associated with the images which are formulated based on human judgement, as corresponding to the claimed "similar clips indicia." To whatever extent these descriptive labels may not contain hidden search criteria, the use of such hidden search criteria in accessing multimedia databases is provided by Cox as discussed supra.

For the above reasons, since it is our opinion that the Examiner's prima facie case of obviousness has not been overcome by any convincing arguments from Appellants, the Examiner's 35 U.S.C. § 103(a) rejection of representative claim 1, as well as claims 2-9, 11, 12, 14, and 15 which fall with claim 1, is sustained.

Turning to a consideration of the Examiner's obviousness rejection, based on the combination of Balogh and Cox, of representative independent claim 16, we sustain as well the Examiner's rejection of this claim and of claims 17-23 which fall with claim 16. We note that independent claim 16, while similar

to previously discussed independent claim 1, includes the feature of displaying to a user an option for finding similar media clips that have matching associated keywords. According to Appellants, while Balogh discloses that information, such as image captions, retrieved in a first search may be used in a subsequent search, there is no displaying of a user option for finding similar clips "without entering a new query with new search language." (Brief, pages 23 and 24; Reply Brief, page 8).

We find ourselves in agreement with the Examiner (Answer, page 18), however, who points out that there is nothing in language of claim 16 which precludes the formulation of a new query with new search language. We further agree with the Examiner (id.) that Balogh provides a disclosure of the claimed option feature since a user is provided an option for search refinement in direct response to the user selection of an image by the visual dragging of the selected image into a search box. As discussed previously, as also alluded to by the Examiner, there is no language in claim 16, contrary to Appellants' arguments, which requires that the search process begin with a selected image.

Lastly, we also sustain the Examiner's 35 U.S.C. § 103(a) rejection of representative independent claims 24 and 38 as well as their respective dependent claims 25-32, 34, 35, and 38-44. Although Appellants have separately grouped independent claims 24 and 38, Appellants' arguments reiterate those made previously with respect to independent claims 1 and 16, which arguments we found to be unpersuasive for all of the above discussed reasons.

In summary, we have sustained the Examiner's 35 U.S.C. § 103(a) rejection of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-9, 11, 12, 14-32, 34, 35, and 37-44 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(effective September 13, 2004; 69 Fed. Reg. 49960 (August 12, 2004); 1286 Off. Gaz. Pat. and TM Office 21 (September 7, 2004)).

AFFIRMED

LEE E. BARRETT)
Administrative Patent Judge)
)
)
) BOARD OF PATENT
LANCE LEONARD BARRY) APPEALS
Administrative Patent Judge) AND INTERFERENCES
)
)
)
JOSEPH F. RUGGIERO)
Administrative Patent Judge)

JFR/kis

Appeal No. 2006-0332
Application No. 09/224,009

CHRISTENSEN, O'CONNOR, JOHNSON & KINDNESS, P.L.L.C.
1420 FIFTH AVENUE
SUITE 2800
SEATTTLE, WA 98101-2347